

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-AT-033
)	
Media General Operations, Inc.)	NAL/Acct. No.200332480019
Owner of Antenna Structure #1058894)	
located in Beech Island, South Carolina)	FRN 0005-7936-66
Richmond, Virginia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 8, 2003

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Media General Operations, Inc. (“Media General”), apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Commission's Rules (“Rules”).¹ Specifically, we find Media General apparently liable for failure to exhibit all required white obstruction lighting during daylight hours and all required red obstruction lighting during nighttime hours on the antenna structure assigned Antenna Structure Registration (“ASR”) number 1058894 in Beech Island, South Carolina.

II. BACKGROUND

2. On February 5 and 6, 2003, an agent from the Commission's Atlanta District Office inspected the newly erected antenna structure with ASR number 1058894 located in Beech Island, South Carolina.² Although there was construction still being performed on the structure, the structure was constructed to its full height of 474 meters. An antenna mast had been installed at the top of the structure. On both days, the structure did not exhibit the required white strobe obstruction lighting at the top of the structure during daytime hours³ and did not exhibit all required red flashing obstruction lighting on the structure during nighttime hours.^{4,5} As of February 6, 2003, the Federal Aviation Administration (“FAA”) had no

¹ 47 C.F.R. § 17.51.

² The ASR specifies antenna structure lighting in accordance with FAA circular 70/7460-1J.

³ FAA circular 70/7460-1J specifies that during daytime hours the structure display multiple levels of white high intensity strobe lights, evenly spaced along the length of the structure, with one set of lights at the very top of the structure. There were no white strobe lights illuminated at the top of the structure.

⁴ FAA circular 70/7460-1J specifies that during nighttime hours the structure display multiple levels of red obstruction lights, evenly spaced along the length of the antenna structure, with flashing lights at the very top and with lower levels alternating between steady burning and flashing lights. There were no flashing red lights illuminated at the very top of the antenna structure. In addition, some of the required lower-level flashing lights were not illuminated.

record of the lighting outage for this structure.

3. On February 7, 2003, the agent spoke with Ardell Hill, the Media General representative in charge of this project. Mr. Hill stated that he had spoken to Kerry Hale, the chief operator for broadcast station WJBF, who confirmed the light outages on the structure. On February 20, 2003, the agent again spoke with Mr. Hill and Mr. Hale. Mr. Hill stated that the structure had been fully constructed to its ultimate height but was technically still under construction. Mr. Hale stated that there had been a lighting controller failure causing portions of the nighttime red lighting to fail, and that he had now installed temporary nighttime lighting at the top of the structure. Regarding the daytime strobe lighting, Mr. Hale stated that prior to the time of the agent's inspections on February 5 and 6, 2003, the daytime strobe lighting operated during the daytime but also (incorrectly) operated at night, causing complaints from neighboring residences. As a result of the complaints, the daytime strobe lighting had been disconnected.

III. DISCUSSION

4. Section 17.51 requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified and all high intensity and medium intensity obstruction lighting be exhibited continuously unless otherwise specified. Media General owns antenna structure 1058894 and is required to exhibit the appropriate obstruction lighting on the structure. This structure's ASR requires white strobe lighting be exhibited during daytime hours and red obstruction lighting during nighttime hours. On February 5 and 6, 2003, Media General failed to exhibit high intensity white strobe lighting at the top of the antenna structure during daytime hours and red flashing obstruction lighting at the top and on the sides of the antenna structure during nighttime hours. Although construction work was still being performed on the structure, representatives of Media General confirmed that the structure itself was constructed to its full height. Moreover, even if the structure had not been fully constructed, Media General was required to maintain temporary obstruction lighting at the very top and at intermediate levels of the structure during all phases of construction.⁶ In addition, Media General failed to immediately notify the FAA of the improper functioning of the structure's lighting.⁷

5. Based on the evidence before us, we find Media General willfully⁸ and repeatedly⁹ violated

⁵ Section 17.45 of the Commission's Rules specifies that: "[d]uring construction of an antenna structure for which red obstruction lighting is required, at least two 116 or 125 watt lamps (A21/TS) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure.... In addition, as the height of the structure exceeds each level at which permanent obstruction lights are required, two similar lights shall be installed at each such level." 47 C.F.R. § 17.45. In addition, FAA circular 70/7460-1J, paragraph 42 (e) states that: "As the height of the structure exceeds each level at which permanent obstruction lights would be recommended, two or more lights of the type specified in the determination should be installed at that level."

⁶ See 47 C.F.R. § 17.45.

⁷ Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. See 47 C.F.R. § 17.48(a).

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

Section 17.51 of the Rules by failing to exhibit the required obstruction lighting.

6. Pursuant to Section 1.80(b)(4) of the Rules,¹⁰ the base forfeiture amount for failure to exhibit obstruction lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80 of the Rules,¹³ Media General is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51 of the Rules by failing to exhibit obstruction lighting on antenna structure 1058894.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Media General SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

⁹ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁴ See 47 C.F.R. § 1.1914.

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Media General Operations, Inc., 333 East Franklin Street, Richmond, VA 23219.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
Atlanta Office, Enforcement Bureau

Attachment